1509/1500

THE STATE

OF THE

Statute Laws Considered.

INCLUDING

Some Account of a Work speedily to be published,

ENTITLED

A DIGEST OF THE STATUTE LAWS,

ON A PLAN ENTIRELY NEW;

CONTAINING THE

SUBSTANCE OF ALL THE ACTS OF PARLIAMENT

From Magna Charta to the present Time.

WITH

HISTORICAL NOTES AND OBSERVATIONS,

(Collected from approved Authors)

To which are added

THE NAMES OF THE PRESENT SUBSCRIBERS.

By J. HUNTINGFORD, Gent.

London:

PRINTED FOR THE EDITOR,

BY J. BARFIELD, NO. 91, WARDOUR-STREET, SOHO;

And sold by Messrs. E. and R. Brooke, and J. Rider, Bell-yard, Temple-bar; Messrs. Cadell and Davies, in the Strand; Reynolds, Oxford-street; Messrs. Rivingtons, St. Paul's Church-yard; and Egerton, Whitehall.

BRITISH MUSEUM
15
APR
66

SUBSCRIBERS.

His Grace the Lord Archbiſhop of Canterbury.
The Right Honourable Lord Loughborough, Lord High Chancellor.
The Right Hon. Henry Addington, Speaker of the House of Commons.
His Grace the Duke of Northumberland, K. G.
The Most Noble the Marquis of Lansdowne, K. G.
——————— the Marquis of Bath, 2 copies.
The Right Hon. the Earl of Liverpool, L. L. D.
——————— Henry Dundas, M. P.
——————— William Windham, M. P.
George Rose, Esq. M. P.
Charles Bragge, Esq M. P.
Charles Abbot, Esq. M. P. L.L.D. F. R. and A. S.
The Lord Bishop of Durham.
——————— Winchester.
——————— Lincoln.
——————— Chichester.
Dr. Laurence, M. P. Chancellor of the Diocese of Oxford.
Rev. T. Burgess, Prebendary of Durham.
The Right Hon. the Earl of Aldborough, L.L.D. F. R. and A. S.
——— ——— the Earl of Darnley, L.L.D.
——————— the Earl of Digby, L.L.D.
William Tatton, Esq. M. P.
The Right Hon. Viscount Grimston.
——————— Viscount Hampden, L.L.D.

Isaac

Isaac Hawkins Browne, Esq. M. P. L.L.D. F. R. S.
The Right Hon. Lord Hawke, L.L.D. 2 copies.
———————— Lord Hobart.
———————— the Earl of Shaftesbury.
Sir Lawrence Palk, Bart. M. P. L.L.D.
John Meyrick, Esq. Fulham.
Colonel Mark Wood, M. P.
Mr. Serjeant Shepherd.
John Vivian, Esq. Temple.
The Right Hon. the Earl of Radnor, F. R. and A. S.
———————— Earl Temple.
———————— the Earl of Moira.
John Osborne, Esq. M. P.
John Penn, Esq. Spring Gardens.
Thomas Grosvenor, Esq. M. P.
The Right Hon. the Earl of Stamford and Warrington.
———————— the Earl of Warwick.
———————— the Earl of Carlisle, K. G.
Sir Philip Stephens, Bart. M. P. F. R. and A. S.
Sir William Young, Bart. M. P. F. R. and A. S.
Christopher Codrington, Esq. M. P.
Joseph Hunt, Esq. F. A. S. Transport Office.
The Right Hon. Lord Spencer Stanley Chichester.
———————— Lord Grantley.
———————— Lord Harewood.
———————— Lord Mulgrave.
R J. Sulivan, Esq. Grafton-street.
Mr. Serjeant Cockell.
George Chalmers, Esq. F. R. and A. S.
John Hodgson, Esq. Bartlet's Buildings.

Subscriptions received by the Editor, No. 67, Jermyn-Street, St. James's.

THE STATE

OF THE

STATUTE LAWS, &c.

A General revision of the Statute Laws appears, by the Report of the Committee* of the House of Commons, upon temporary Laws, expired or expiring, to have been often recommended from the throne—to have been petitioned for by both houses of parliament—to have engaged the labours of successive committees—and to have been undertaken by individuals under the sanction of royal and parliamentary authority; but never to have been actually carried into execution, at least not perfected to the full extent so generally desired: it may, therefore, be thought presumption in the

* Report of the 13th of May, 1796. 44 Debret's Debates, 826.

present editor to venture individually on so arduous a task, which has engaged the collective labours and the collective wisdom of united committees, whom, it may be supposed, better enabled to effectuate the purpose, if practicable, than any individual whomsoever—and that if former endeavours have been successful, there can be now little or nothing remaining to be done, or, if ineffectual, it may certainly appear arrogant in the extreme for the present editor to suppose himself capable of succeeding where so many, with superior advantages, have failed. But having, for a number of years, devoted a greater portion of his time than what perhaps, in justice to himself and his profession, he was warranted, and following more the bent of his own inclination, by collecting historical notes and observations on the Statutes at Large, than with any settled intention, at the first, of ever publishing the result of his researches; but conceiving that even an imperfect performance might be of use, and that without just reprehension he might offer his labours to his country, and solicit its encouragement and countenance in an attempt, which certainly is of the greatest national importance; the advantages whereof will be derived immediately to all ranks and to all orders of men, and in its consequences to all posterity: and hoping from the flattering approbation he has already received (which were he permitted he should be proud to boast of) to be excused in thus standing forward and offering what may probably

hereafter

hereafter be thought only worthy of being called a mere outline of what ought to be done.

In the report above referred to, it is stated, that there is no authentic and entire publication of the Statutes; that a very considerable number of whole Statutes, as well as clauses* and sentences of Statutes, which are upon the original rolls, never have been printed at all†; that many, which are printed as Statutes, do not exist upon record; or have not properly the form or force of Statutes; and that the Statute Law has through a series of six centuries, accumulated at length to a most voluminous mass, which is rapidly increasing, and has been nearly doubled in bulk, within the last fifty years. That without presuming to question the policy of the Statute Law in any of its branches, the Committee cannot but observe the matter of it to be in many places discordant‡; in other places obsolete; in others perplexed by its miscellaneous composition of incongruities; and that its style is for the most

* The notes subjoined to the Report are too long for insertion here: but the learned reader is referred to the following authors quoted therein:—Nicolson's English Hist. Lib. p. 524. 154. 4 Bur. 2549. 2 Inst. 588. 593. 1 Rep. in Chancery. Harleian MSS. n. 1574. 3 to. 12 to 21. 1 Raymond 197. 2 Jo. 51. 2 Mod. 240. 2 Bla. 1102. Cotton's Abridgement.

† Hargr. Co. Litt. p. 69. a. 67. a. n. 2. Prynne on 4 Inst. 38. Harleian MSS. 244. fo. 40.

‡ Harleian MSS. n. 244. 2 Montesquieu lib. 29. in toto.

part verbose, tautologous, and obscure; all of which circumstances, seem to have engaged the attention of parliament at successive periods, but never to have produced any improvement, in the degree which their importance demands.

That in Queen Elizabeth's reign, in the year 1577*, Lord Keeper Bacon drew up a plan for reducing, ordering, and printing the Statutes of the realm; and the queen recommended to parliament a general revison of the Statute Laws in 1593†; and a committee of the House of Commons was appointed in 1597, to consider of a bill for the abridging and reforming the excessive number of superfluous and burdensome penal laws.

King James I. upon his accession to the throne of England, and in subsequent periods of his reign, recommended also to parliament a reform of all the Statute Laws †, and of the penal laws in particular‡. In the year 1610, a digesting and repealing of the penal laws was expressly stipulated by the House of Commons, and acceded to by the House of Lords in their joint transaction of the great contract with the crown§, when James I. was to have given up the Court of Wards for a consideration of

* Harleian MSS. 249. fo. 117. 118. and Lord Bacon's works, 4to. 2 vol. fo. 326.

† Dewe's Journal 473. 4 Parl. Hist. 345. 372.

‡ Dewe's Journal 553. 5 Parl. Hist. 259.

§ 4 Co. Rep. in pref. 5 Parl. Hist. 30. 395.

‖ Lords Journal, 2 vol. 601. 5 Parl. 259.

£200,000

£200,000 per annum, " That his Majesty be " petitioned to appoint some to make a diligent " survey of all the penal statutes of the realm, to " the end that such as are obselete, and unprofitable " may be repealed, and that for the better ease " and certainty of the subject, all such statutes as " were profitable concerning one matter might " be reduced into one statute." Lord Coke* mentions having received such orders from James I. and which he highly extols. Even Lord Bacon himself was with Lord Chief Justice Hobart, Serjeant Finch, Mr. Noy, and others, by the king's command employed for a considerable time in the general work of reforming and re-compiling the Statute Laws †, and made a considerable progress in it ‡; which his lordship describes § as an excellent " undertaking, of honour to His Majesty's times, " and of good to all times;" and recommends, in imitation of the statutes 27 Hen. VIII. c. xv. and 3 and 4 Edw. VI. c. xi. for appointing commissioners to examine and establish ecclesiastical laws, that commissioners be named by both Houses for this purpose also, to prepare and propound the matter to Parliament.

During the Commonwealth, the same undertaking was resumed with ardour, on the establishment of

* 4 Report.

† Lord Bacon, 2 vol. 546. Harleian MSS. n. 244.

‡ Barrington, 560.

§ 2 Vol. 4to. 547.

 what

what is called *Barbones' Parliament;* which though it consisted of some ignorant and fanatical members (perhaps the better to answer the protector's turn in this respect) there was a scheme set on foot by some of the ablest men of the time, to reform the system of jurisprudence, and a committee was appointed, with Lord Commissioner Whitelock at the head of it, "to revise all former statutes and ordinances "now in force, and consider, as well which are fit "to be continued, altered, or repealed, as how the "same may be reduced into a compendious way "and exact method, for the more ease and clearer "understanding of the people;" and the committee were empowered "to advise with the judges, and "to send for and to employ, and call to their assist-"ance therein any other person whom they should "think fit for the better effecting thereof, and to "prepare the same for the further consideration of "the House, and to make a report thereof*." The mode that this committee adopted was—reducing all the laws under their proper heads: beginning with treason, and then proceeding to murder, theft, and the various securities of property, &c. But whilst the intelligent part of the House (formed into a committee) were thus laudably employed, the majority of the remainder (who, it must be confessed, were composed either of fanatics, or persons ill instructed in the arts of government,)

* 6 Comm. Journ. 427.

fell

fell into other systems of reformation, which not only exposed them to the derision of the public, but *Cromwell* himself begun to be ashamed of them, he therefore set his creatures to work, to persuade the rest, "That they could be of no service to the "nation;" they hastened therefore to *Cromwell*, along with *Rouse*, their speaker, and by a formal deed resigned back into his hands the supreme authority which they had so lately received from him*.

In the year 1652, Matthew Hale, Esq. (afterwards Lord Chief Justice Hale) Sir Anthony Ashley Cowper (afterwards Lord Chancellor Shaftesbury) and Rushworth, the historian, with other persons out of the house, were appointed to report to the committee their opinions upon the inconveniencies of the law; and a revised system of the law was reported to the house in the course of the same year†. The same labour was afterwards transferred to other hands; but the work was not abandoned; and in 1653, a committee was appointed to consider of a new model or body of the law‡.

After the Restoration, Finch, Solicitor General (afterwards Earl of Nottingham and Lord Chancellor) Serjeant Maynard, Sir Robert Atkins, Mr. Prynne, and others, were appointed in 1666, to be

* 20 Parl. Hist. 198.

† 7 Com. Journ. 58. 74. 249, 250.

‡ 7 Com. Journ. 304. 20 Parl. Hist. 213. 232. 236.

a committee "to confer with such of the Lords the *Judges*, and other persons of the long robe, who have already taken pains, and made progress, in perusing the *Statute-Laws;* and to consider of repealing such former Statute-Laws as they shall find necessary to be repealed; and of expedients of reducing all Statute-Laws of one *nature* under such a method and head, as may conduce to the more ready *understanding*, and better *execution* of such laws*." This seems to be the last recorded instance of the sort. And thus it is, *say* the committee, that Parliament has hitherto failed to accomplish this general revision, and has now suffered it to sleep for more than a century, although the delay of it has annually augmented its necessity. The attention of modern times has perhaps been the less directed to this national work, as upon this subject our general histories, with too great an attention to matters of legislative or juridical importance, are wholly silent.

The committee say they cannot abstain from submitting to the house, as the result of their observation upon the above investigation, the extreme importance of obtaining a complete and authentic publication of the Statutes; and that, in their opinion, the surest method of proceeding at present to obtain it, would be by extracting them from the parliament rolls (printed a few years ago in six

* 8 Com. Journ. 634.

volumes

volumes folio, by order of the king, upon the address of both houses of parliament, and to which an index and glossary remain to be added) completing them also from the statute rolls at the tower, the chapter-house, and the parliament office; so far as these two distinct sets of records continue to run in a parellel series. From thence the statute rolls in the parliament office are the only records that are strictly original, which they think should be transcribed or collated throughout. This portion of the work would, say they, however be the less difficult, the public acts having already been printed from the statute roll, by the king's printer, in modern times, and a regular series of them from 1 William III. being preserved in the custody of the officers of the house.

The above committee (which was formed on the suggestion of a member * who has given this subject as appears by their very elaborate report more attention than what perhaps has been paid to it by any other person for many years past), say that being impelled † by an ardent desire to render their labours of permanent service to the public, and having entered upon so large a view of the matters referred to their consideration, beg leave to close their report with a suggestion which they cannot forbear to state, as its general importance seemed

* Charles Abbot, Esq. M. P. for Helstone.

† P 833.

to merit an immediate attention. Promulgation of the statutes has been at all times (say they) conceived to be absolutely necessary for giving efficacy to the law, and providing for the safety of the subject.—Whilst the antient usage prevailed, of annexing the tenor of every ordinance and statute to the proclamation writ, which was directed to each sheriff in his county, this purpose was accomplished in a manner adapted to the circumstances of those times to which the usage belonged*. Since this course has been superseded by the more convenient and popular use of printing, although the expediency of promulgation cannot have been diminished, and although the means of it have been so greatly facilitated, and the occasions of it have multiplied so rapidly, yet the measure itself has been wholly discontinued, to the great prejudice of justice, the embarrassment of magistracy, and the perils of individuals. The committee therefore proposed, as a remedy for this grievance, the heads of some resolutions which were made the subject of a report† of a select committee of the present parliament, for a better promulgation of the statutes, which to some readers may not be unacceptable to have stated, and which is as follows.

* 2 Inst. 526. 639. 670

† Report the 20th of March, 1797. Debret's Debate 72.

I. That

I. "That his Majesty's printer be authorized and "directed to print and deliver no less than "3,550 copies of every public and general "act of parliament instead of 1,126 now issued, "and not less than 200 copies of every local "act, including road bills, and 200 copies "of every private act, according to the usual "mode of distribution.

II. "That he print and deliver the public acts, or "remit them by the post as soon as pos-"sible after they are ordered.

III. "That the private acts be remitted in the same "manner.

IV. "That copies be sent to the chief magistrate or "head officer of every corporate town, stew-"artry, or burgh in England, Scotland, and "Wales.

V. "That the parties interested in private bills pay the "expence of printing, instead of the public.

VI. "That the general statutes state the heads and "clauses of each statute, together with the "general substance of each head in a particu-"lar clause.

VII. "That the precise duration of tempoary bills be "inserted in the head, or close of the bill, "and no where else.

VIII. "That the revival of various statutes proposed to "be revived, be included in one bill, and "those to be continued in another, expressing "the precise duration or continuance thereof."

These

These resolutions were reported and ordered to be printed, and soon afterwards a conference had with the House of Lords thereon.

The present parliament having come to the above resolutions, the editor presumed that it would not be unseasonable at this time to offer some hints on the subject of digesting the Statute Laws, the present period seeming from many concurring circumstances to encourage this undertaking. The general character of the age is strongly marked for its desire of investigating the laws and the causes which gave them origin. The Sovereign on the throne exhibits a bright example to his people of giving encouragement to such laudable desires. Add to this, that the seats of judicature were never filled with judges more able or more ready to forward such pursuits.

It is not, however*, to be doubted, that as the reformation of the law hath been an object, and often the chief glory of the greatest reigns, but that under the present auspicious one (which began by an act† recommended from the throne itself, to perpetuate to this nation the most pure administration of justice; and from the tenor of the above resolutions, for the better promulgation of the statutes, this great point will ultimately be attended to; may future ages then celebrate the present illustrious reign as the æra when so necessary an object may be accom-

* Barrington, 557.

† 1 Geo. III. c. xxiii.

plished,

plished, "than the which," said Lord Bacon*, with not a tenth part of our statutes before him, "I think "there cannot be a work that His Majesty can under- "take more politic, more honourable, and more "beneficial to His subjects for all ages."

The editor is apprehensive he has trespassed too long on the patience of such of his readers as are already conversant with the subject, to whom possibly nothing new may be pointed out, but trusts that the importance of the subject, both to the learned and unlearned, will plead his excuse in adding some few observations from approved authors on the above subject, before he proceeds to give the detail of his plan.

The laws of a nation circumstanced like England, in its vast influx of wealth and extension of commerce, must increase to such a number, and consist of so great a variety of particulars, as to render it impossible for the generality of the subjects to be masters of them, and the author of lectures† on the laws of England, observes, that great undoubtedly are the inconveniencies which attend a multiplicity of laws, and very hard it seems, that all men should be obliged to obey a rule, which it is confessed the majority are incapable of perfectly knowing; but such is the natural and necessary course of things. It being a maxim in the laws of

* Vol. 2, p. 185.
† Sullivan, 3.

England,

England, that the want of knowledge thereof shall not excuse a man from the penalty of it; surely it becomes absolutely necessary that the means of procuring this knowledge be rendered as easy to each individual as possible.

Crimes * will be less frequent in proportion as the code of laws is more universally read and understood, and as the disorders which the passions of mankind cause in society, increase in proportion to the number of people, and the opposition to private interest, so in political arithmetic, it becomes the more necessary that the people should have laid before them the consequences of indulging those passions which such disorders occasion.

The author of the principles of penal laws †, observes, that it is essential to political freedom that the law be clearly obvious to common understandings, and fully notified to the people. And further, that antiently the laws were composed in verse, which were frequently sung in public, that men might remember them. The laws of the twelve tables were so well known, that, in the time of Cicero, children ‡ learnt them by heart, in the first rudiments of their education. At Athens the laws were written upon tables in large characters, and hung up in public places on the walls. The invention of

* Beccaria on Crimes and Punishments, 18.

† Eden's Penal Laws, 312.

‡ 2 Montesquieu, lib. 29. c. 16.

printing

printing, and the easy circulation of printed papers, have made these precautions unnecessary in our times; but, in England, the effectual promulgation of the laws is much retarded by the manner in which they are formed. It was well observed by Lord Bacon, that the mandatory clause ought always to be placed at the beginning of the statute, yet those tedious preambles, which seem to have been derived from the antient method of passing laws by petition, are still retained, though frequently ill connected with the subsequent parts of the law, to which they are prefixed. When the laws are imperfectly known, they are feared, not loved. For, when the people first learn the law by fatal experience, they feel as if the judge was, in effect, the legislator; and as if life and liberty were subjected to arbitrary controul: the idea of insecurity is spread through the whole society; and the sense of safety, in which political freedom is founded, ceases to exist.

The old acts of parliament * are certainly, as far as they go, the very best materials for an English History, and are likewise strongly descriptive of the manners of the times, especially † if compared with the writers, either in divinity or morality, about

* Barrington's Observations on Antient Statutes, pref. 4.

† Nicholson's English His. Lib. 2 edit. 189.

the

the same date. And it has been thought * that we could not have a more entertaining and faithful history of our nation, than a good edition of our statutes, with annotations, giving an account of making every act.

The elegant author † of the History of Charles the Fifth, likewise observes: "That the state of government, in all the nations of Europe, having been nearly the same during several ages, nothing can tend more to illustrate the progress of the English constitution, than a careful enquiry into the laws and customs of the kingdoms on the continent. This source of information has been too much neglected by English antiquaries and lawyers, filled with admiration of that happy constitution now established in Great Britain, they have been more attentive to its forms and principles, than to the condition and ideas of remote times, which, in almost every particular, differ from the present. While engaged in perusing the laws, charters, and early historians of the continental kingdoms, he has often been led to think, that an attempt to illustrate the progress of the English jurisprudence and policy, by a comparison with those of other kingdoms in a similar situation, would be of great utility, and might throw much light on some points which are now ob-

* Johnson's Clergyman's Vade Mecum, pref. 2.
† Robertson's History of Charles V. 1 v. p. 478.

"scure,

" scure, and decide others, which have been long " controverted."

For the necessity and propriety of such an edition of the statutes, we have also the authority of *Sir Edward Coke**, who says, " Many records " of parliament can hardly be understood, unless " you join thereunto the history of their time." Lord Kaims † also says, That a statute, or any regulation, if we confine ourselves to the words, is seldom so perspicuous as to prevent errors, perhaps gross ones. In order to form a just notion of any statute, and to discover its spirit ‡ and intendment; we ought to be well informed how the law stood at the time, what defect was meant to be supplied, or what improvement made. These particulars require historical knowledge; and therefore, with respect to statute-law at least, such knowledge appears indispensable.

The same able writer § further observes, that an author‖, in whose voluminous writings not many things deserve to be copied, has recommended the history of the law with great superiority of thought and expression. " I might instance (says he) in

* 4 Inst. 52.

† Law Tracts, pref. 7.

‡ 2 Montesquieu, lib. 29.

§ Pref. 8.

‖ Bolingbroke of the Study of History, 353, 4to. edit.

" other professions, the obligations men lie under
" of applying themselves to certain parts of history,
" and I can hardly forbear doing it in that of the law,
" in its nature the noblest, and the most beneficial
" to mankind, in its abuse and debasement the
" most sordid and the most pernicious. There
" have been lawyers that were orators, philosophers,
" historians: there have been *Bacons* and *Claren-*
" *dons*.—There will be none such any more, till,
" in some better age, true ambition, or the love of
" fame, prevails over avarice: and till men find
" leisure and encouragement to prepare themselves
" for the exercise of this profession, by climbing
" up to the *vantage ground*, so my *Lord Bacon* calls
" it, of science, instead of groveling all their lives
" below, in a mean, but gainful, application to all
" the little arts of chicane. Till this happen, the
" profession of the law will scarce deserve to be
" ranked among the learned professions: and when-
" ever it happens one of the vantage grounds to
" which men must climb is metaphysical and the
" other historical knowledge. They must pry into
" the secret recesses of the human heart, and become
" well acquainted with the whole moral world, that
" they may discover the abstract reason of all laws;
" and they must trace the laws of particular states,
" especially of their own, from the first rough
" sketches, to the more perfect draughts; from the
" first causes or occasions that produced them,
" through all the effects, good and bad, that they

" pro-

" produced."—What Montesquieu * observes on the feudal laws, which, he says, form a very beautiful prospect, may not be unaptly applied to our present purpose, that " A venerable old oak raises its " lofty head to the skies; the eye sees from afar its " spreading leaves; upon drawing nearer, it per- " ceives the trunk, but does not discern the root; " the ground must be dug up to discover it."

The learned author of the Commentaries † likewise observes, There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy; that is, how the common law stood at the making of the act, what the mischief was, for which the common law did not provide; and what remedy the parliament hath provided to cure this mischief, to which may be added the true reason of the remedy‡.

Although, perhaps, for prudential reasons, the causes which actuated the mob in the riots in the year 1780, are not expressed in the acts that were passed in consequence thereof, yet without recurring to the history of the time, it would be impossible to gather from either of them§, whence such mob took its origin. And any one the least conversant in

* 2 Vol. lib. 30. c. 2.
† 1 Bla. 87.
‡ Wood's Inst. 9. 3 Rep. 7.
§ 20 Geo. 3. c. 63, 64.

history, will, on a cursory view of the statutes, find many instances of the like kind.

The members of the legislative body having their attention engrossed by the general and more important concerns of government, cannot be supposed to enter into the minute detail of business. It cannot be expected that when they are passing a law, that they can collate, perhaps, more than thirty different acts of parliament, many of which will, after all, elude their discovery, by reason that provisions may be unaccountably crowded into acts*, which, from their title and general context, bear not the least apparent relation to the subject of their researches. As the members themselves cannot be supposed to descend to this minuteness, so neither is it any one's particular office or duty, to make this intricate and tiresome, though necessary investigation; for without it, it is impossible but that inconsistencies and redundancies will frequently occur, and render the laws obscure and perplexed, which ought to be simple and perspicuous.

Nor are these laws † to be purchased but for a larger sum of money, nor to be understood without

* Vide 10 Ann. c. 14. 8 Geo. 2. c. 24. 10 Geo. 2. c. 32. 15 Geo. 2. c. 33. 17 Geo. 2. c. 40. 20 Geo. 2. c. 42. 22 Geo. 2. c. 46. 27 Geo. 2. c. 16. 28 Geo. 2. c. 15. 4 Geo. 3. c. 12.

† 4 Burn's Justice, conclusion.

a greater

a greater expence of time than a wise man would often chuse to employ in that way. And it has been thought impracticable * to bring them into method, and therefore a prejudice has been taken up against their perusal, even by men of parts and learning, as if there was no way to attain to the knowledge of them, but by a tedious wandering about, or with the greatest application, and long attendance on the highest courts of justice.

We have likewise the authority of a great crown lawyer†, in favor of the plan here proposed, who ‡ observes, That the knowledge of these laws is matter of great and universal concernment; it merits, for reasons too obvious to be enlarged on, the attention of every man living. For no rank, no elevation in life, and, we may add, no conduct how circumspect soever, ought to tempt a reasonable man to conclude, that these laws do not, nor possibly can, concern him. A moment's cool reflection on the utter instability of human affairs, and the numberless unforseen events which a day may bring forth, will be sufficient to guard any man, conscious of his own infirmities against a delusion of this kind; and it may ‖ almost be said, that no man

* Wood's Inst. pref. 1.
† Forster's Crown Law.
‡ Pref. 18.
‖ Barrington, 562.

of business can go through life, without subjecting himself to many prosecutions, when, at the same time, he may not perhaps be conscious of having offended against any law whatsoever.

According to a great writer*, the study of the law is not rendered easy by numerous volumes, but by its being reduced into a complete methodical system, and the difficulty and disagreeableness of this study, is not to be imputed to any material defect in itself, but to the manner in which the books that contain that learning are written.

To the perplexed state of the statute code may be imputed, the reproach and ridicule which has been frequently thrown on the laws of England: for it, has been often said, "That they are no where "more excellent in themselves, but no where worse "executed†;" indeed how should they be otherwise, when, in many cases, it is a science even to find them out, and when discovered, it is a science equally difficult to reconcile them.

With a view then to extricate the Statute Laws from these reproaches, and to render them less complex, the Editor of the intended Publication will venture to present, before the public, the result of his labours, the chief design of which is to make a collection of all the acts digested under general

* Lord Bacon.

† Sir Josiah Child on Trade.

heads,

heads, with historical notes, and observations, that each different profession may be fully informed of the statutes by which they are more particularly bound or favoured, that thereby they may less frequently offend the law, which is said * to arise more through ignorance, or through want of information, than obstinacy.

In pursuance of the above design, and under the sanction of such very respectable authorities, the Editor will attempt to bring together, under one chapter, divers articles relating to the same subject, which, in the common books, are broken and detached under various separate titles, hoping thereby that what hath hitherto been thought productive of confusion, may tend to render the subject more perspicuous, in exhibiting the whole under one comprehensive view; and by this method of bringing together, into one general title, all those separate distinct titles, which have a mutual relation to, and dependance upon each other, the Editor will avoid one great inconvenience of referring the reader from one title to another, and from that back again to the first, and (which is not unusual in books of the like kind) perhaps losing the thing to be treated of betwixt them. Upon which account also, where one law occurreth under two general heads, the same will be inserted under both those heads; so that the

* Fielding's Penal Laws, 2.

reader's attention may not be interrupted and distracted by sending him to search other heads or titles, and from those perhaps others again, which have no principal relation to the matter in hand.

The arrangement of the general heads (the whole of which are already digested, and a variety of historical notes collected upon each) will be as they arise in the statutes, commencing and classed in the following order.

The *first* general head will commence with the first chapter of Magna Charta, and will contain the Acts relative to the Church, Religion, and Ecclesiastical Courts, Persons and Possessions, Universities and Schools. At the end of the chapters of this first head, occasionally will be added an Appendix*, containing the articles, canons, and other ecclesiastical records, from the Reformation to the present period†. The *second* will contain the Acts relative to Tenures and Estates; Courts of Common Law and Equity; of Criminal and inferior Jurisdictions, and of mat-

* It is proposed to publish, with historical notes and observations, a Digest of the Canons, Constitutions, Injunctions, Orders, and Ordinances of the Church of England, from the earliest Period to the time of the Reformation, intended as a Supplement to the first general Head, and which is already arranged.

† "The temporal law and the ecclesiastical law are so "coupled together, that the one cannot subsist without "the other." Lord Coke in Moore's Rep.

ters

ters cognizable therein.—The *third*, to the King, Queen, and Royal Family, Prerogative, Ambassadors, Parliament, and Peers.—The *fourth*, to London, Westminster, Towns Corporate, Cinque Ports and Counties Palatine.—The *fifth*, to Bridges, Rivers, Highways, the Poor, Game, Fish, Husbandry, Fairs, Markets, and Timber.—The *sixth*, to Weights and Measures, Trades, Manufactures, Aliens, Denizens and Jews.—The *seventh*, to the Customs, Excise, Taxes, Stamps, Funds, Coin, Trading Companies, and Plantations. The *eighth*, to Ireland, Scotland, Wales, and Islands dependant on Great Britain.—And the *ninth*, to the Army and Navy.

Whether the above order of distributing the general heads might not be changed for a better, the Editor is in some doubt; yet he hopes that the present disposition is not materially improper, but on this, as also on other parts of the plan, he shall be glad to receive any communications from those who are best qualified to determine the merit of such a proposal, and takes this opportunity of returning his thanks to those gentlemen who have already favored him with their sentiments and assistance, whereby he has been enabled to enlarge his original design.

Although the work must of course extend to a greater number of volumes than at present can possibly be ascertained, yet it will contain an advantage, that every person who may have occasion to refer to the statutes upon a particular subject, and are unable to purchase the whole of them, may be

supplied

supplied with the particular code or head they may be desirous of obtaining, better adapted to their particular occasions, and at a much cheaper expence than any other publication extant, without being obliged to subscribe to, or take more parts than what relates to their own concerns. It is not denied but that every publication of this kind already extant, has certain intrinsic merit, which it is not the Editor's wish or desire to depreciate, being sensible that he shall have a more than common share of indulgence to solicit for his own; and that every article in such other publication, which, as an article may be deserving of considerable regard, yet as it stands connected with what ought to precede or follow, it cannot surely have the same influence upon the mind, by being arranged according as the order of the letters which constitute their technical names determine, without its antecedents and consequences. At the same time as there might be some inconvenience in being reduced to the necessity of perusing a whole chapter, when a particular topic only may be wanted to be consulted, a table of contents, methodically arranged, will be prefixed to each chapter, which will form a complete treatise within itself; and for the convenience of those who may be desirous of perusing the acts in a chronological order, an analytical table of the contents, with the titles * of the acts, will likewise be prefixed to each volume. And in order to furnish a reference

* Rayner's Readings on Statutes, pref. 11.

to what may tend to illustrate any particular point, a copious Index will be added to each volume of the principal matters, historical text, and names both of persons and places; including also the most material parts of those to the parliamentary journals; and at the conclusion of the work will be given, a complete biographical and topographical Index to the Statutes, both public and private. Thus the systematic reader will be fully and regularly informed, by turning to the general title in which the subject he wishes to examine is contained; while the person who, already acquainted with the whole, wishes only to consult particular branches, or others who are willing to content themselves with partial and detached views of things, will, by the means of marginal notes and proper referrences, be directed to the chapter or page of the general title where they are fully discussed. As to the private, local, and personal acts, they will be arranged under distinct heads.

The Editor flatters himself, that the biographical and topographical Index will be found not only of great use to the antiquary, but also to the historian, particularly to the local historian, the herald and biographer; and that its real utility, in innumerable instances, will be readily acknowledged. The Editor will lose no time (as other circumstances will permit) in completing the manuscript of this Index, which will be open to the inspection of such of his Subscribers as may wish to make biographical or topographical searches of the Statutes at Large.

The

The utmost care will likewise be taken to add only so much historical matter (which will be entirely void of party) as may be sufficient to explain the mischief intended to be remedied, leaving all the extraneous matter that may arise out of the subject, with such additional observations as may have occurred in the mean time, together with so much of any act as may appear not to have been inserted in the general head, to be treated of in one or more miscellaneous chapters at the conclusion of each general head, whereby the digest will not only be more connected and brought into less compass, but the price be also reduced. And in citing authorities, the Editor will deem it indispensable to attribute to every man what is his own, and alledge his vouchers, upon all occasions, of what credit soever they may be.

The several books of reports will of course be carefully perused and examined, but for the purpose only of collecting therefrom such historical matter as they may be found to contain, as the taking the determinations of the courts on the several acts into the work, would not only be contrary to its original plan, but would extend every chapter to nearly a volume of itself.

In abridging the acts, the Editor will give the same in the words of the statutes themselves, lest by any change of expression, the law should be liable to receive a different construction, with explanatory notes of the obselete terms, and will leave out nothing

thing any way material, whereby the reader will be convinced, that every clause of each act is abridged and assigned to some particular head. To accomplish a task so arduous and important, neither labour nor expence will be spared in procuring every assistance, literary or otherwise, which may serve to render the work as deserving as possible the patronage of the public: The best abstracts, abridgements, and digests, on each particular general head, will be collected and compared. Such as can be abridged without disadvantage, will be epitomized with all possible care: others, more concise, will be more closely pursued, and more faithfully retained.—When subjects have been obscurely or imperfectly treated, the utmost endeavours will be used to supply the defects; and such parts of the several acts as are not fully abridged by others (which are already found to amount to no inconsiderable number) a careful abridgement from the act itself will be inserted, and which will be repeatedly perused.

No statutes will be inserted in the several chapters, but those that have been printed as such in former editions, and where found to differ from other editions, that from which it is digested, will be mentioned; but, in the notes, will occasionally be added those acts, clauses, and sentences of statutes which are upon the rolls, but are not printed in the statute books*. And should the legislature, at any

* Commons Report, 13 May, 1796.

time

time hereafter, be desirous of reducing, into one act, the several statutes which are at present unrepealed, relative to any one title similar to what has been done with regard to the militia, highways, &c. &c. (and which would, were it adopted in all cases, be rendering the study of the statute laws more inviting, and the statutes more clear and intelligible to those who are bound to observe and execute them) it is apprehended, that on such a salutary and desirable object, not to say a necessary work, being adopted, this publication may facilitate the progress of so useful a design.

The object of the Editor being fairly and faithfully to state what was the real cause of an act being passed, and as the most correct of the reporters are not always able to gather the precise ideas of the promoter of the act, and which are not always expressed in the preambles*, although much wished to have been impressed on the minds of the public, and to be recorded in the annals of history; he hopes those members of parliament who interested themselves in bringing in any bills, as also such other gentlemen who may have observed such omissions, will have the goodness to point them out, it being his desire to render the work as perfect as so extensive a plan is capable of.

* Barrington, 394, 477. Rayner, pref. 17.

After

After surveying any subject, it may be found equally useful and entertaining to many, to acquire, at the same time, some particulars of the private history of such eminent statesmen as have distinguished themselves in the enacting the particular laws to which their attention has been recently engaged. For this purpose some short biographical memoirs will occasionally be added, with a view to illustrate particular acts, and to diffuse new light through the code in which the persons whose lives are related, were employed, and which, it is presumed, is too obvious to require explication or apology, to those who may think the publication will thereby be extended to an unnecessary length; and in order to gratify curiosity, the Editor will subjoin whatever else may appear necessary for the reader's information and readier comprehension. And here it may not be amiss to mention, that although this work is to be published under general heads, in which particular classes of persons will be more or less interested, yet many who may be desirous of promoting the undertaking, may delay subscribing, from the probable period of time which may elapse, before that part which may concern their occasions or affairs in life may be published, it is presumed that the terms of Subscription which are offered, will be found to be such, as may induce every well wisher to the undertaking, to become an early subscriber, as the means whereby they themselves may be the sooner

supplied

supplied with the general head to which they may think proper to give the preferrence.

The Editor is aware that it may be said, that the work he has undertaken is too arduous a task to be performed with fidelity and success, as the mind ought not to expatiate in too extensive a range; and that it would be a considerable undertaking to give with perspicuity, a complete digest of any one general head, with historical notes, and observations: the Editor would readily subscribe to this argument, in its full extent, provided he had the whole work to begin, and he meant to suggest the reformation of the statute law, which he is sensible can never be effectually carried on without the assistance of able lawyers*, not members of the legislature; but the plan here submitted, to use the words of Lord Bacon about another proposal, does not "regard the matter of the laws, but the "manner of their registry and tradition, so that it "giveth them rather light than any new nature;" and when it is considered that he offers himself to the public merely in the light of an editor or compiler, and, at the same time, that the labor of several years have been devoted to this pursuit—that the tables of the acts to the several general heads are already drawn out, and other arrangements completed, with upwards, on an average, of

* Barrington, 563.

500

500 historical notes minuted on each general head, the reader will readily see that the immensity of the undertaking cannot now be brought against the probability of its execution, but, on the contrary, the longer it is deferred, the more necessary it must grow; and that he now waits only for the patronage of the public, which he doubts not will fully remunerate his past and future labours, and whereby he shall be enabled to complete his undertaking; and if it is allowed that the better promulgation of the statute laws is necessary, it is humbly submitted the importance of the subject will induce those who have an earnest regard to the interest of society to promote this attempt, which, if it succeeds, future ages, as well as the present, will derive the advantages.

To readers long conversant with law, and well acquainted with the history of successive acts of parliament, perhaps, as before has been observed, nothing new may be presented; yet as many readers must have sensibly experienced the labour of revolving the records of antient days, they are particularly requested to receive the Digest with indulgence. With so many materials, and to co-operate with the public taste so favorable in investigating history, which, for some time past, has been considerably advancing, the propriety of digesting such voluminous information, into a systematic form is strongly pointed out. This

is a matter of no small difficulty; the making such a collection is laborious and expensive; and the arranging of the collection, after it is made, requires a painful industry. It is true, indeed, that this work will be but a collection, but it must be considered, that collecting on the subject of the law, is infinitely more difficult than upon other subjects; because most other subjects are treated of with order and connection, but the Law of England * is not, by reason of the great number of its branches, and the various heads thereof. To individuals of a less laborious turn of mind, or to those occasional readers to whom business is the chief object of life, it will be no inconsiderable thing to have it, at all times, in their power to resort, at pleasure, to the particular code of statute laws by which they are bound or favored with the history of those laws from the earliest period to the present moment; and as such history is discussed in numerous volumes, probably to such readers some new information may be found. And as there is no work at present, or that ever was published, that has the same claims to patronage with respect to general information on the statute-laws, and from the various improvements made of late years in every branch of learning, the Editor flatters himself, that his en-

* Sullivan.

couragement will prove adequate to the efforts he has used, and means to continue, in order to render it useful, interesting, and entertaining to all ranks and degrees of society; and that, upon the whole, the necessity and utility of the design will compensate for its defects, and that the humility of his attempt will repress the severity of censure; and that even those who may find no reason to applaud his skill, will at least do justice to his industry, and that he shall be excused in requesting the Reader's indulgence for the present hasty performance, which would not have made its appearance at this period, had not several noblemen and gentlemen intimated a wish that a more accurate Plan of the Work than what can be contained in a mere Prospectus or Advertisement, was submitted to the Public.

PLAN

OF THE INTENDED

DIGEST

OF THE

STATUTE LAWS.

CHAP. I.

Of the Church, Briefs, Chapels, Churchrates, Churchwardens, Churchyards, Consecration, Dedication, Images, Parish Clerks, Sanctuary, Vestries, and Union.

CONTENTS.

CHURCH.—The Church of England shall be free, and have her rights and liberties inviolable, § 1.*—Observation on what these liberties

* The figures refer to the sections.—The confined limits of the following pages will not allow the table of contents to be given so full as might be wished; but the Editor trusts the reader will thereby see the plan proposed to be pursued.

were supposed to be, *ib.*—Privileges of the Gallican church, *ib.*—The charters shall be read in all cathedral churches, § 4.—Copies of the charters formerly deposited in every cathedral, *ib.*—Every king shall swear to preserve to the church its rights and privileges—Founding of churches—Consecration and dedication—Anniversary dedication day, *note* § 2.—Chancel—Ile—Repair of churches—No prohibition in case of repairs, § 3.—Seats—Goods and ornaments of the church—Images in churches—Church-rate—Churches not to be profaned—Bishops to accurse perturbers of the peace of the church, § 7.—The case of the wives of Lord Strange and Sir John Trussel, at Saint Dunstan's in the East, *ib.*—Arrest—Temporal Courts—Plays—Feastings—Brawling—Striking—or drawing a weapon in a church or church-yard—Robbing of churches—Sanctuary in case of abjuration, § 6.—Ancient oath of abjuration, *ib.*—Union of churches—Perambulation of parishes.

CHURCH-YARDS. No fairs or markets to be kept in church-yards, § 2.—Formerly kept there on particular solemnities, *ib.*—Instances of such fairs at London, Westminster, and Durham, *ib.*—Riots therein occasion charters for fairs to be granted, *ib.*—No prohibition in case of the church-yard being uninclosed, § 3.—Original of church-yards, *ib.*—Monastery at Canterbury erected

erected for a dormitory, *ib.*—Prayers for departed souls, *ib.*—Burial in churches and church-yards, *ib.*—Trees shall not be cut down in church-yards, unless for repair of the chancel, or the body of the church, § 5.—Yew trees planted in church-yards, *ib.*

CHURCHWARDENS. Who are exempt from the office—Chusing and swearing—Their duty in levying rates, and of vestries and select vestries—Also repairs—As to sundry other matters—Presentments—Accounting—Punishment on misbehaviour—Protection in the execution of their office.

VESTRY Clerk, Parish Clerk, Sexton, and Beadle. Qualification—Appointment—Salary.

BRIEFS. Manner of laying, and collecting of charity thereupon—the usual expence and ordinary amount of collection.

CHAPEL. Private chapels—Free chapels—Chapels of ease—Their endowment and dependence—Repairs of.

Liberties of the church.

§ 1. A. D. 1225. By magna charta, 9 Henry III. c. 1.—First, We have granted to God, and by this our present charter, have confirmed for us and our heirs for ever, That the Church of England shall be free, and shall have all her whole rights and liberties inviolable*.

Fairs and markets shall not be kept in church-yards.

§ 2. A. D. 1285. By 13 Edw. I. stat. 2. c. 6. The King commands and forbiddeth, that from

* It is a remark of Sir G. Mackenzie, (in his observation on the Scotch Statutes) that every reign of the ancient Kings of Scotland, begins with a provision of a similar nature in favor of the liberties of the church. The same may be observed with regard to almost all the compilations of old laws; the reason is obvious. The learned observer on the ancient statutes supposes, that the liberties of the *English church* hereby insisted upon, were chiefly its immunities from the papal juisdiction, which had been so far extended in the reign of Henry's predeceſſor; otherwise those of the collective body of clergy would have been only mentioned. Thus likewise the French insisted upon the liberties of the *Gallican church*, in opposition to the Pope, which occasioned Du Tillet's compiling a learned treatise, from the French Archives, in 1602, on that subject. The laborious Prynne hath also collected three large folios of records, to prove these immunities of the English church. The greatest part of the printed copies of his second volume was destroyed by the fire of London, so that it is not only scarce, but sold at an immense price: it contains, however, many curious and valuable records.—Barrington's Observations on the ancient Statutes, 4 Edit. page 6.

hence-

henceforth neither fairs nor markets be kept in church-yards, for the honor of the church*.

§ 3. By 13 Edw. I. stat. 4. If prelates do punish for leaving the church-yard † uninclosed, or for

No prohibition in case of repairs.

* In ancient times amongst the Christians, upon any extraordinary solemnity, particularly the anniversary dedication of the church, tradesmen used to bring and sell their wares in the church-yards, especially upon the festival of the dedication; as at Westminster on St. Peter's day; at London, on St. Bartholomew; at Durham, on St. Cuthbert's day, &c. But riots and disturbances often happening, by reason of the numbers assembled together, privileges were, by royal charter, granted for various causes to particular places, towns, and places of strength, where magistrates presided to keep the people in order.—Brand's Observations on Popular Antiquities, 361.

† As to the original of church-yards or burying places, many writers have observed, that at the first erection of churches, no part of the adjoining ground was allotted for the interment of the dead; but some place for this purpose was appointed at a further distance. Especially in cities and populous towns, where, agreeably to the Roman law of the twelve tables, the place of inhumation was without the walls, first indefinitely by the way side, then in some peculiar inclosure assigned to that use. Therefore the Roman pontifical, amongst other inventions, is in this respect corrected of error, that it makes Pope *Marcellus*, under the tyrant *Maxentius*, appoint twenty five churches in *Rome* to bury martyrs in, when at that time laws and customs

for that the church is uncovered, or not conveniently decked, in which cases no other penance can

cuſtoms did forbid all burial within the city. Hence the Auguſtine monaſtery was built without the walls of *Canterbury*, (as Ethelbert and Auguſtine in both their charters intimate) that it might be a dormitory to them and their ſucceſſors the kings and archbiſhops, for ever. This practice of remoter burials continued to the age of Gregory the Great, when the monks and prieſts beginning to offer for ſouls departed, procured leave for their greater eaſe and profit, that a liberty of ſepulture might be in churches or in places adjoining to them. This mercenary reaſon ſeems to be acknowledged by Pope Gregory himſelf, whilſt he allows, that when the parties deceaſing are not burthened with heavy ſins, it may then be a benefit to them to be buried in churches, becauſe their friends and relations, as often as they came to theſe ſacred places, ſeeing their graves, may remember them and pray to God for them. After this, Cuthbert Archbiſhop of Canterbury, brought over from Rome this practice into England, about the year 750; from which time they date the original of church-yards in this iſland. This was a ſufficient argument of the learned Sir Henry Spelman, to prove an inſcription at Glaſtenbury to be a later forgery, becauſe it pretends, *dominus eccleſiam ipſam cum cæmiterio dedicarat*, whereas there was no cœmitery in England till above 700 years after the date of that fiction. The practice of burying within the churches, did indeed (though more rarely) obtain before the uſe of church-yards; but was by authority reſtrained, when church-yards were frequent, and appropriated to that uſe. For among thoſe

can be enjoined but pecuniary—the spiritual judge shall have power to take knowledge, notwithstanding the king's prohibition.

§ 4. A. D. 1297. By 25 Edw. I. c. 3. The charters * shall be sent, under our seal, to cathedral churches throughout our realm, there to remain, and shall be read before the people twice in the year.

The charters to be sent to cathedral churches.

§ 5. A. D. 1307. By 35 Edw. I. stat. 2. intitled *Statutum ne rector prosternat arbores cœmeterio.* Because we do understand, that controversies do oft-times grow between parsons of churches

Trees not to be cut down in church-yards, unless for repairs.

those canons which seem to have been made before Edward the Confessor, the ninth bears this title, *De non sepeliendo in ecclesiis*, and begins with a confession that such a custom had prevailed, but must be now reformed, and no such liberty allowed for the future, unless the person be a priest, or some holy man, who by the merits of his past life might deserve such a peculiar favor.—However, at first it was the nave or body of the church, that was permitted to be the repository of the dead, and chiefly under arches by the side of the walls. Lanfrank Archbishop of Canterbury, seems to have been the first, who brought up the practice of vaults in chancels, and under the very altars, when he had rebuilt the church of Canterbury, about the year 1075.—Ken. Par. Ant. 592, 593.

* These charters must therefore be in the archives of every ancient cathedral, if not mislaid or destroyed.—Barrington, 174.

and

and their parishioners, touching trees * growing in the church-yard, both of them pretending that they do belong unto themselves; we have thought it good, rather to decide this controversy by writing than by statute. Forasmuch as a church yard that is dedicated, is the soil of a church, and whatsoever is planted belongeth to the soil; it must needs follow, that those trees which be growing in the

* The learned obſerver on the ancient ſtatutes remarks, that low as churches were built at this time, the thick foliage of the yew anſwered the purpoſe of ſkreening the church from the wind better than any other tree; and that he has been informed that the yew trees in the church-yard of *Gyffin*, near Conway, having been felled, the roof of the church ſuffered exceedingly; alſo that the planting yews in church-yards, being places fenced from cattle, aroſe, it is imagined, at leaſt in many inſtances, from an attention to the material from which the beſt bows are made; and that we do not hear of ſuch trees being planted in the church-yards of any other parts of Europe. Barrington, 191, 424. But it is remarked that the planting of yew trees in church-yards, ſeems to derive its origin from ancient funeral rites; in which, (Dr. Browne in his *Urne Burial* Conjectures) from its *perpetual verdure*, it was uſed as an emblem of the reſurrection. He obſerves further, that the Chriſtian cuſtom of decking the coffin with *bay*, is a moſt elegant emblem. It is ſaid that this tree, when ſeemingly dead, will revive from the root, and its dry leaves reſume their wonted verdure.—Brand's Obſer. 37.

church-

church-yard, are to be reckoned amongst the goods of the church, the which laymen have no authority to dispose; but as the Holy Scripture doth testify, the charge of them is committed to priests to be disposed of. And yet seeing those trees be often planted to defend the force of the wind from hurting the church, we do prohibit the parsons of the church, that they do not presume to fell them down unadvisedly, but when the chancel of the church doth want necessary reparations; neither shall they be converted to any other use, except the body of the church doth need like repair, in which the parsons of their charity shall do well to relieve the parishioners, with bestowing upon them the same trees: which we will not command to be done, but will commend it when it is done.

§ 6. A. D. 1315. By the 9 Edw. II. c. 10.— They that abjure * the realm so long as they be in the church; shall not be compelled to flee away, but they shall have necessaries for their living, and may go forth to empty their belly.

Those who abjure the realm protected while in the church.

A. D.

* The ancient oath of abjuration was thus:—This hear thou Sir Coroner, that I. M. of H. am a robber of sheep, (or of any other beast, or a murderer of one or more) and a felon of our Lord the King of England, and because I have done many such evils or robberies in this land, I do abjure the land of our Lord Edward King of England, and I shall haste me towards the port of such a place which thou hast given me, and that I shall

Disturbers of the church to be accursed.

§ 7. A. D. 1335. By the 9 Edw. III. (according to Rastal) it was enacted, That writs should be directed to the bishops, to accurse all and every the perturbers of the peace of holy church*, every Sunday

shall not go out of the highway, and if I do, I will that I be taken as a robber and felon of our Lord the King; and that at such a place, I will diligently seek for passage, and I will tarry there but one flood and ebb, if I can have passage, and unless I can have it in such a place, I will go every day into the sea up to my knees assaying to pass over, and unless I can do this within forty days, I will put myself again into the church, as a robber and a felon of our Lord the King, so God me help, and his holy judgment.

* In the year 1415, the wives of Lord Strange and Sir John Trussel, contending for precedency in the church of Saint Dunstan in the East, in London, their husbands thereupon with all their retinue, engaged in the quarrel, and within the body of the church some were killed, and many wounded, for which profane riot, several of the delinquents were committed, and the church suspended the celebration of any divine office. By process of the Court Christian, the Lord Strange and his Lady were adjudged to be the criminal parties, and had this solemn penance imposed upon them by that exemplary prelate, Archbishop *Chichley*:—The Lord Strange walked bareheaded with a wax taper lighted in his hand, and his Lady barefooted, from the church of St. Paul, to that of St. Dunstan, which being rehallowed, the Lady, with her own hands, filled all the church

Sunday and double feasts, in the cathedral churches, and to proceed against them according to the canon law.

church veſſels with water, and offered to the altar, an ornament of the value of ten pounds; and the Lord, a piece of ſilver to the value of five pounds.—Ken. Par. Ant. 560.

PLAN

PLAN

PROPOSED FOR THE

INDEX.

N. B. The figures refer to the foregoing pages.

ABJURATION, thoſe who abjure the realm, protected while in the church—the ancient oath of 49
Anniverſary, of the dedication of a church - 45
Archery, yew trees, perhaps, planted in church-yards for the uſe of archery — — 44
Bay, decking the coffin with — — 44
Biſhops, writs to be directed to them to accurſe perturbers of the church — — — 50
Burial, original of burying-places—Burying in the church—In the church-yard — — 45
Canterbury, Auguſtine monaſtery there intended as a dormitory for the kings and archbiſhops — 46
Cathedral, magna charta to be read in all cathedrals, copies of, antiently depoſited in every cathedral 47
Chancel, trees ſhall not be cut down unleſs for the repair of the chancel or church — — 48
Chichley, an exemplary prelate — — 50

Church

Church of England ſhall be free, and have her liberties inviolable—Obſervation on what thoſe liberties were ſuppoſed to be 44—Prelates may puniſh thoſe that leave churches uncovered—No prohibition in caſe of repairs 46—The church a place of ſanctuary — — — 49
Church-yard, fairs and markets not to be held there—Origin thereof 45—Trees growing in the church-yard—Who hath property therein 48—Anciently without the walls — — 45
Coroners, uſed to take the confeſſion of ſanctuary perſons — — — 49
Cuthbert, Archbiſhop of Canterbury, brought over the practice of burying in churches — 46
Dead, when prayers for ſouls departed firſt began 46
Dedication, fairs anciently held on the anniverſary of — — — — 45
Dunſtan, Saint, in the Eaſt, reconſecrated — 50
Durham, fair held there on St. Cuthbert's day — 45
Evergreens at funerals — — 48
Excommunication againſt perturbers of the church 50
Fairs ſhall not be kept in church-yards—Uſed to be held on the anniverſary of the dedication of the church, at London, Weſtminſter, and Durham Origin of charters being granted for holding fairs 45
Gallican Church, privileges of — — 14
Glaſtenbury, an inſcription there proved a forgery 46
Lanfrank, Archbiſhop of Canterbury, ſaid to have brought up the practice of vaults in chancels, and under the altars —— — 47
Liberties of the church granted 44—Great charters to be read in cathedrals —— — 47
London, fair held there on St. Bartholomew's day 45

Magna charta, obſervation on the firſt chapter of 44
—Shall be publicly read in all cathedrals — 47
Marcellus, ſaid to have appointed twenty-five churches in Rome to bury martyrs in — 45
Markets, not to be kept in church-yards — 45
Nave, or body of the church, permitted to be a repoſitory for the dead — 47
Prohibition, not grantable in caſes merely ſpiritual 46
Quarrelling in a church, the caſe of the wives of Lord Strange and Sir John Truſſel — 50
Reconſecration of a church — 50
Repair of the church or church-yard — 45
Sanctuary, the church a place of ſanctuary—How thoſe who fly to churches ſhall be kept—Ancient oath of abjuration — 49
Scotland, every reign of the ancient kings began with a proviſion in favor of the church — 44
Trees in church-yards not to be felled, but for the repairs of the church or chancel—Who hath the property in them — 47
Weſtminſter fair held there on St. Peter's day — 45
Yew Trees planted in church-yards. — 48

TERMS

TERMS OF THE SUBSCRIPTION.

THE Work will be publiſhed in Octavo, and continued till the whole is completed.

The firſt Volume, containing the Acts relative to the *Church*, *Biſhops*, *Monaſtries*, *Benefices*, *Privileges*, *and Reſtraints of the Clergy*, will be put to the Preſs as ſoon as the number of ſubſcribers ſhall amount to two hundred; and thoſe who are deſirous of promoting the attempt to ſo arduous and uſeful an undertaking, are requeſted to ſignify the ſame as early as convenient.

N. B. The following, among other titles, will be included in the firſt Volume.

Advowſons,	Curates,	Reſidence,
Appropriations,	Firſt Fruits,	Simony,
Benefices,	Lapſe,	Veſtries,
Biſhops,	Leaſes,	Vicars,
Chaplains,	Monaſtries,	AND
Churches,	Pariſh Clerks,	Union.
Churchwardens,	Pluralities,	

The ſum of One Guinea to be ſubſcribed in advance, for which a Receipt, ſigned by the Editor, will be given, and the firſt and ſecond Volumes of the firſt, or any ſucceeding general head, to which the Subſcriber may think proper to give the preference, be delivered, and the remainder allowed at the concluſion of ſuch ſelected general head.

Subſcriptions received by the Editor, No. 67, Jermyn-Street, St. James's.

15 APR 66